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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,997	02/20/2002	Warren Wallo	JBP0584	3696

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EXAMINER

STREGE, JOHN B

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/077,997

Applicant(s)

WALLO ET AL.

Examiner

John B. Strege

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/9/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Response to Amendment

1. The amendment received 5/9/05 has been entered in full. Currently claims 1-6 are pending in the application. Based on the amendment to the specification the objection to the specification has been withdrawn.

Response to Arguments

2. Applicant's arguments filed 5/9/05 have been fully considered but they are not persuasive. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the applicants' invention does not require taking several images from different directions in order to obtain a three-dimensional image for comparison with another image taken at a different time) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore the specification states that any three-dimensional imaging device that provides three dimensional images may be utilized (page 6, line 16-18).

Examiner's Comment

3. Although the drawing are acceptable it is noted that the images are very dark and very little detail can be seen in them (especially figures 4 and 5). If the Applicant's desire replacement drawing they should be submitted in response to the current Office Action.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aubert et al. USPN 4,670,781 (hereinafter "Aubert") in view of JP 08100316A (hereinafter abbreviated JP'316).

Claim 1 discloses, "a method for measuring changes in a portion of a human body including: obtaining a first three-dimensional image of the portion of a human body; treating the portion of a human body to create changes therein; obtaining a second three-dimensional image of the portion of a human body so treated; overlaying the first three-dimensional image and the second three-dimensional image; and comparing the first and second images to measure changes in the portion of a human body."

In figure 1 Aubert discloses a process for appreciation of variations with respect to time of characteristics, particularly dimensions or coloration or other characteristics, of a zone of or the whole of a person (col. 1 lines 5-11). Such an appreciation of dimensional characteristics arise when following up the effects of slimming products, or of treatments intended to modify the figure of a person (col. 1 lines 11-15). The process involves taking a first image of the zone or the whole of the person using a video camera, taking a second image of the zone or the whole of the person at a later time

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after treatment, and measuring the first and second images using an image analyzer (paragraph bridging cols. 1-2 and col. 2 lines 26-28). Specifically the image analyzer makes it possible to view the two images superposed (overlapping) and then image comparison, differences display, and differences measurement will occur (col. 5 line 61 – col. 6 line 5, overlapping seen in figure 1 numerals 10-12).

Aubert does not disclose that the images obtained are three-dimensional. However Aubert discloses carrying out a three-dimensional analysis by using 4 different viewpoints (col. 4 lines 18-24 and 43-44).

JP'316 discloses a system where three-dimensional images of a body are obtained and the images are aligned to facilitate comparison of body types (taken from the English abstract).

Aubert and JP'316 are analogous art because they are from the same field of endeavor of analyzing the human body.

At the time of the invention it would have been obvious to one of ordinary skill in the art to modify Aubert to obtain three-dimensional images instead of carrying out the analysis from four separate viewpoints. The motivation for doing so is that it would simplify the invention. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Aubert and JP'316 to obtain the invention as specified in claim 1.

Regarding claims 2 and 4, as seen in figure 1 of Aubert (numerals 10-12) the measurement is a visualization utilizing a digital picture frame.

Regarding claims 3, and 5-6 it is well known to use lenticular printing, a personal data assistant, and a portable DVD player to accomplish visualization and thus the examiner declares Official Notice that it would be obvious to do so. The motivation for doing so is that it would allow the customer a convenient way of viewing the progress of their treatment.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information


Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Strege whose telephone number is (571) 272-7457. The examiner can normally be reached on Monday-Friday between the hours of 8-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (571) 272-7453. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JS


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